IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

Crl.Rev.Pet.No. 2466 of 2007()

CRA.127/2005 of ADDL. SESSIONS COURT (ADHOC), PATHANAMTHITTA
ST.539/2003 of CHIEF JUDICIAL MAGISTRATE COURT,
PATHANAMTHITTA

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REVN. PETITIONER: APPELLANT/ACCUSED:

P.K.VASAVAN, PALANIKUNNATHIL HOUSE,
MEZHUVELI P.O., MEZHUVELI VILLAGE,
KOZHENCHERRY TALUK.

BY ADV. SRI.P.JACOB VARGHESE
SRI.VIVEK VARGHESE P.J.

RESPONDENTS: RESPONDENTS/COMPLAINANTS:

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1. CHAKKALAMANNIL CHITTY FUND,
THUMPAMON NORTH, MEZHUVELI VILLAGE,
REPRESENTED BY MANAGING PARTNER, REJI C.MATHEW.

2. STATE OF KERALA, REPRESENTED BY THE
ADDL. PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.ROY THOMAS
SRI.N.M.VARGHESE
PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 10/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 2466 OF 2007

Dated this the 10th day of July, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in S.T. No.539/03 on the file of the J.F.C.M., Pathanamthitta challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the revision petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. Both the courts have

considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

4. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. The sentence imposed on the revision petitioner is simple imprisonment for six months and to pay a fine of Rs.19,75,000/-(Rupees nineteen lakhs seventy five thousand only) being the cheque amount and on default to pay the fine to suffer simple imprisonment for three months. The revision petitioner is undergoing the substantive sentence. Having regard to the facts and circumstances of the case, I am inclined to alter the sentence from one of fine to one of compensation under section 357(3) Cr.P.C. Accordingly, in the place of the direction to pay the fine, the revision petitioner shall pay the cheque amount of Rs.19,75,000/-(Rupees nineteen lakhs seventy five thousand only) by way of compensation under section 357(3) Cr.P.C. besides the imprisonment already undergoing by him. The learned counsel for the revision petitioner prays for six months' time to pay the compensation amount. The counsel for the 1st respondent complainant opposed the

said prayer. Having regard to the facts and circumstances of the case, I am inclined to grant four months' time to the revision petitioner to pay the compensation amount. Accordingly, the revision petitioner is given four months' time to pay the compensation amount failing which he shall suffer simple imprisonment for three months by way of default sentence.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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